

JAMES M. CHUDNOW
JOHN L. MESSINGER

IBLA 82-1173

Decided January 24, 1983

Appeal from decisions of the Colorado State Office, Bureau of Land Management, requiring execution of no surface occupancy stipulations for certain lands in oil and gas lease offers C 34502 and C 34503.

Set aside and remanded.

1. Environmental Quality: Generally -- Oil and Gas Leases: Stipulations

The Board of Land Appeals will affirm a decision requiring execution of a no surface occupancy stipulation where the record identifies the resource requiring such protection and explains why less stringent alternatives would be insufficient to provide it. Where the case record does not contain an adequate explanation referable to the specific land included in the lease offer, the record is inadequate for adjudication of the appeal and the case will be remanded to the Bureau of Land Management.

APPEARANCES: James M. Chudnow and John L. Messinger, pro sese.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

James M. Chudnow and John L. Messinger have appealed from separate decisions of the Colorado State Office, Bureau of Land Management (BLM), requiring execution of no surface occupancy stipulations for land in sec. 6, T. 10 N., R. 78 W., sixth principal meridian, Colorado, for oil and gas lease offers C 34502 and C 34503. 1/ The land subject to the proposed stipulation is in the Sand Dune Natural Area. The land was withdrawn from all forms of appropriation under the public land laws including the mining laws, but not from leasing under the mineral leasing laws, for the protection of unique botanical, geological, or zoological characteristics and of irreplaceable scientific and recreation values by Public Land Order (PLO) No. 3530, 30 FR 1193-94 (Feb. 4, 1965). Appellants contend that the no surface occupancy

1/ Oil and gas lease offer C 34502 was filed by Chudnow and Messinger. Offer C 34503 was filed by Chudnow and Steven P. Glenn.

stipulation has been imposed only for "nebulous" reasons, and request that less stringent stipulations be considered.

The Environmental Analysis Report (EAR), in its updated form, states at page 12:

There are numerous geologic resources that are unique and interesting in the county. One of the most important is the North and East Sand Hills areas. The sands were deposited at the base of the Medicine Bow Mountains by the westerly winds blowing across the park floor.

It is the sand hills, apparently, which constitute the geological feature which is deemed worthy of protection by BLM.

The only document in the case file which concerns the imposition of stipulations is a "Decision Record/Rationale" dated May 4, 1982. The document indicates that a no surface occupancy stipulation is required to protect the North Sand Hills Natural Area, and refers to an umbrella oil and gas environmental assessment, No. C-24154, for Jackson County. An update of that report, signed by the Area Manager on May 21, 1982, indicates that no leasing should be allowed because "[t]he parcels covered by the withdrawal contain important geological features." The original report contained the same recommendation. Nevertheless, the State Office decided in these cases to allow leasing, subject to a no surface occupancy stipulation. The record fails to afford any explanation for deviating from those "no lease" recommendations.

[1] The fact that the order withdrawing the land left it open for oil and gas leasing suggests that an issuance of an oil and gas lease is not inconsistent with the purposes of the withdrawal. Nevertheless, the Secretary of the Interior has the discretion to refuse to issue an oil and gas lease even where the land has not been withdrawn from operation of the mineral leasing laws. See James E. Sullivan, 54 IBLA 1, 2 (1981). If the Secretary decides to issue a lease, he may require the execution of special stipulations to protect environmental and other land use values. Id. The Board will affirm a BLM decision rejecting an offer or requiring execution of a no surface occupancy stipulation where the record identifies the resource to be protected and explains why less stringent alternatives would be insufficient to do so. See Melvin A. Brown, 53 IBLA 45 (1981); Vern K. Jones, 33 IBLA 74 (1977). Where the case record does not contain an adequate explanation referable to the specific land involved in the lease offer, the record is inadequate for adjudication of the appeal and the case will be remanded to BLM for further consideration. See Max B. Lewis, 56 IBLA 293 (1981); Melvin A. Brown, *supra*; Vern K. Jones, 26 IBLA 165 (1976). In the instant appeal, neither the case record nor the umbrella environmental analysis indicate any reason for issuing the lease subject to the "no surface occupancy" stipulation, in preference to refusing to lease at all, or leasing subject to some less stringent stipulation. In short, the record is simply an inadequate basis on which to adjudicate the propriety of BLM's decision. consequently, the case must be remanded to BLM for reconsideration.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed

from is set aside and the case remanded for further action consistent with this opinion.

Edward W. Stuebing
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

